file S.1

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The Press and S.1

There is now under active consideration in the Senate Judiciary Committee a bill that constitutes a grave danger to freedom of the press and to the right of every citizen to know how his Government conducts foreign and military policy. Known in the Senate as S.1, it is sponsored by Senator McClellan, Arkansas Democrat, and has several bipartisan cosponsors including Senate Majority Leader Mansfield and Senate Minority Leader Scott. It is questionable whether these members are aware of the ominous implications of the measure to which they have attached their names.

This bill, and a companion measure pending in the House, would bring about a far-reaching revision of the Federal criminal code. Federal criminal laws have never previously been codified but have merely accumulated for nearly 200 years as Congress has added new statutes and the courts have developed various precedents interpreting them.

The ambitious overhaul now being attempted has produced S.1, an enormously long bill—over 750 pages—and would result in significant changes in existing legal interpretations of obscenity, insanity, the death penalty, and other major issues. The menace to the press is in seven sections of the bill relating to classified information. Three of these sections deal with foreign agents and foreign espionage systems and would probably cause no serious difficulties.

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But the remaining four sections—1121 through 1124 of the proposed code—would legitimize the comprehensive and unnecessary claims of secrecy advanced by recent Administrations in their preoccupation with "national security."

Section 1121 makes it a felony for anyone to "communicate" information to a foreign power or to obtain such information, knowing that it may be communicated to a foreign power. This vague term "communicate" is broad enough to include newsmen reporting on the actions of the Government and Government employes "leaking" information to the press in an effort to expose corruption or waste that their superiors may wish to conceal.

The term "national defense information" in the bill is so sweeping that it covers almost ever conceivable kind of military activity. Cost overruns on new weapons, treaty negotiations for bases in foreign countries, and military assistance to other countries, for example, are all legitimate subjects for press inquiry and public knowledge in a free country.

Section 1122 makes it a crime for any person—normally a Government employe—to communicate national defense information to a person who he knows is not authorized to receive it, while Section 1123 covers all other persons who pass on national defense information to third parties. These provisions are menacing because they are so broad. Thus, if a reporter learned that the Army was spying on members of Congress—as it did under the Johnson and Nixon Administrations—and told his editor, both of them would be guilty of violating the law.

Finally, Section 1124 makes it a crime for any present or former Federal employe to disclose any kind of classified information to anyone not authorized to receive it Except in narrow circumstances, the fact that the information was old and out-of-date or that it was misclassified in the first place would constitute no legal defense.

The need for secrecy and the claims made for "national security" are usually vastly overstated. The United States has no need for a law that would help officials conceal their mistakes far more often than it would hide anything of importance from a foreign enemy.